

May 3, 2012  
OPINION 12-0056

71 –MUNICIPALITIES

La. R.S. 33:321 et seq.

La. R.S. 33:362

La. R.S. 33:381

La. R.S. 33:404

La. R.S. 33:404.1

La. R.S. 39:1301 et seq.

The board of aldermen in a Lawrason Act municipality may not usurp the power of the mayor through the passage of an ordinance. The board does not have the authority to hire, fire or discipline municipal employees. Nor may it participate in an employee annual review process or modify their pay.

Mayor Phillip Bickham  
Village of Folsom  
82378 June Street  
Folsom, Louisiana 70437

Dear Mayor Bickham:

Our office received your request for an opinion pertaining to the power of the Mayor over the administration of the municipality in the Village of Folsom.

Specifically, you have asked our office for an opinion as to whether the following provisions of Folsom Ordinance 6.1 impermissibly impede upon the authority of the mayor in a Lawrason Act municipality:

a. Appointment.

- (2) The board shall appoint all full time and part time employees of the Village. Appointments to positions shall be made on the basis of merit and fitness. In filling vacancies an effort should be made to promote qualified employees before seeking outside replacement.
- (5) The mayor and board will conduct an annual review and appraisal session the first week in May of each year. This session shall be used to determine status of employees on an individual basis. Any written salary request by employees will be heard and considered at the June meeting and become effective the first pay period in July. The mayor and the board of aldermen will determine if any changes in position or pay are necessary. Any change in status will appear on the June Agenda of the general meeting to be put to a vote.

b. Suspension and Dismissal.

- (1) During the investigation, hearing or trial of any employee on any criminal charge or during the course of any civil action involving

the employee, when suspension would be in the best interest of the municipality, the board may suspend without pay for a duration of the proceedings as a nondisciplinary measure. Back pay shall not ordinarily be recoverable, but where the suspension is terminated by full reinstatement of the employee, the board may authorize full recovery of pay and benefits for the entire or for any lesser period of suspension.

- (2) An unsatisfactory employee shall be notified how his work is deficient and what must be done if his work is to be satisfactory. If the employee's work continues to be below standard, the board and mayor shall demote or dismiss the employee.
- (3) Any employee demoted or discharged may appeal to the board at a regular meeting.

The Village of Folsom is a political subdivision of the State of Louisiana operating under and governed by the Lawrason Act, La. R.S. 33:321 *et seq.* As stated in La. R.S. 33:362(B), the mayor is the chief executive officer of a Lawrason Act municipality. The board of aldermen holds the legislative powers within the municipality. La. R.S. 33:362(A)(1). This system creates a balance between the two, ensuring neither go beyond their authority or act unilaterally. La. Atty. Gen. Op. No. 11-0084.

The mayor's powers, duties and responsibilities are set forth in La. R.S. 33:404(A). He is vested with the authority to direct and supervise the day-to-day operations of the municipal government and its employees. La. R.S. 33:404(A)(1). See also La. Atty. Gen. Op. Nos. 11-0105 and 86-652. This mayoral authority must be exercised in conformity with ordinances adopted by the Board, however, "no such ordinance may limit the authority granted to the mayor by this paragraph." La. R.S. 33:404(A)(1). Further, the Mayor may appoint and remove the majority of municipal employees without the board's consent. La. R.S. 33:404(A)(3). The mayor must get the consent of the board of aldermen to appoint or remove the non-elected police chief, municipal clerk, municipal attorney or any department head. La. R.S. 33:404(A)(3).

The board of aldermen has the authority to pass ordinances providing policy and procedures regulating municipal employees including the hiring and firing of such employees. La. R.S. 33:362(A)(3). This authority does not allow for the board to make individual decisions regarding employees. La. Atty. Gen. Op. No. 09-0264. Additionally, the board of aldermen cannot usurp the power given to the mayor under the guise of legislative authority. *Bourgere v. Anzelmo*, 517 So.2d 1121 (La. App. 5 Cir. 1987).

Our office has previously opined that although the board of aldermen can pass procedures for hiring and firing, which include setting work hours, limiting the number of employees, etc., the board does not have the authority to actually perform the hiring and

firing or disciplining of employees. La. Atty. Gen. Op. Nos. 02-0276, 98-58, 95-201, 90-112, 87-477 and 86-325. The mayor alone has the power to suspend municipal workers. La. Atty. Gen. Op. No. 04-0209. Thus Ordinance 6.1(A)(2), which gives the Board the sole authority to hire municipal personnel, is beyond its authority. Further, Ordinance 6.1(B)(1), which gives the Board the power to suspend municipal employees, is also beyond its authority.

The board of aldermen has the power to set the compensation for municipal officers. La. R.S. 33:404.1. Municipal officers are the mayor, aldermen, chief of police, tax collector and clerk. La. R.S. 33:381. The board may increase or decrease the pay for nonelected municipal officers and can increase the pay for elected municipal officers. La. R.S. 33:404.1. The board may not alter the pay for any other municipal employees, as that would be a usurpation of the mayor's authority. La. Atty. Gen. Op. No. 97-492. As written, Ordinance 6.1(A)(5) gives the Board and the Mayor equal authority to approve all municipal employee pay raises. This is beyond the authority of the board, as their authority in this regard only extends to municipal officers. The mayor alone has the authority to give pay raises to municipal employees who are not municipal officers subject to the constraints of the Local Government Budget Act, La. R.S. 39:1301, *et seq.*

Additionally, Ordinance 6.1(A)(5) gives the Board the authority, with the Mayor, to conduct an annual job review of municipal employees. The Board does not have the authority to participate in such a review, as that role is reserved for the Mayor. As the supervisor of municipal employees, it is within the mayor's sole authority to conduct performance reviews. La. R.S. 33:404(A)(1). Further, La. R.S. 33:404(A)(1) clearly provides that "[a]ll administrative staff shall be subordinate to the mayor."

As stated above, the Board does not have the authority to fire or discipline municipal workers. Further, this office has previously opined that a board of aldermen cannot participate in this process by committee with the mayor. La. Atty. Gen. Op. No. 90-112. Therefore, Ordinance 6.1(B)(2), which allows the Board to play a role in this process, is beyond the authority of the Board.

As the mayor alone is vested with the authority to hire and fire most municipal employees, it would be counter to that mentality for the board of aldermen to have the authority to overturn such a decision.<sup>1</sup> Our office has previously opined that since the firing of a municipal employee can be done without the concurrence of the board, that decision should not be capable of being overturned by the board. La. Atty. Gen. Op. No. 04-0209. Thus, Ordinance 6.1(B)(3), which allows the Board to hear employee termination appeals, is beyond the authority of the Board.

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<sup>1</sup> The mayor must seek the concurrence of the board of aldermen to remove a nonelected chief of police, the municipal clerk, the municipal attorney, any department head or any person hired to audit the accounts of the municipality. La. R.S. 33: 404(A)(3).

Consequently, as described above, multiple sections of Folsom Ordinance 6.1 conflict directly with the authority granted to the Mayor by state law. A state statute takes precedence over any and all local ordinances, and state statutes cannot be modified by any inconsistent local ordinances. It is well settled that local government is without authority to enact ordinances which are inconsistent with or in contravention of state law.<sup>2</sup>

In conclusion, outside of the specific exceptions outlined in La. R.S. 33:404(A)(3), the Board of Aldermen does not have the authority to hire, fire or discipline municipal employees. Further, the mayor alone has the power to conduct an annual review and determine if pay raises are warranted for municipal employees. Additionally, the Board of Aldermen does not have the authority to review the termination of municipal employees made by the mayor.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JAMES D. "BUDDY" CALDWELL  
ATTORNEY GENERAL

BY: \_\_\_\_\_  
Jessica MP Thornhill  
Assistant Attorney General

JDC: JMPT

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<sup>2</sup> *Restivo v. City of Shreveport*, 566 So.2d 669 (La.App. 2 Cir. 1990); *State ex rel. Corbello v. Bond*, 441 So.2d 742 (La. 1983); *Rollins Environmental Services of Louisiana, Inc. v. Iberville Parish Police Jury*, 371 So.2d 1127 (La. 1979); *City of Lake Charles v. Broussard*, 475 So.2d 411 (La.App. 3 Cir. 1985); *McSweeney v. Louisiana Bd. of Veterinary Medicine*, 555 So.2d 469 (La. 1990); *Bourgere v. Anzelmo*, 517 So.2d 1121 (La.App. 5 Cir. 1987).

SYLLABUS

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Mayor Phillip Bickham  
Village of Folsom  
82378 June Street  
Folsom, Louisiana 70437

DATE ASSIGNED: 15 MAR 12

DATE RELEASED: May 3, 2012

Jessica MP Thornhill  
Assistant Attorney General